File No. 673

(Reprint of File No. 68)

Substitute Senate Bill No. 499
As Amended by Senate Amendment
Schedule "B"

Approved by the Legislative Commissioner
May 2, 1998

AN ACT CONCERNING SLAMMING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 16-256i of the general statutes is repealed and the following is substituted in lieu thereof:

(a) AS USED IN THIS SECTION:

(1) "CUSTOMER" MEANS (A) IN THE CASE OF A RESIDENTIAL CUSTOMER, ANY ADULT WHO IS AUTHORIZED BY THE INDIVIDUAL IN WHOSE NAME THE LOCAL EXCHANGE CARRIER HAS ESTABLISHED AN ACCOUNT FOR TELECOMMUNICATIONS SERVICES TO AUTHORIZE A CHANGE IN TELECOMMUNICATIONS SERVICES, AND (B) IN THE CASE OF A BUSINESS CUSTOMER, ANY INDIVIDUAL WHO IS AUTHORIZED BY THE BUSINESS TO AUTHORIZE A CHANGE IN TELECOMMUNICATIONS SERVICES;

(2) "TELEMARKETER" MEANS ANY INDIVIDUAL WHO, BY TELEPHONE, INITIATES THE SALE OF TELECOMMUNICATIONS SERVICES FOR A TELECOMMUNICATIONS COMPANY; AND

(3) "TELEMARKETING" MEANS THE ACT OF SOLICITING BY TELEPHONE THE SALE OF TELECOMMUNICATIONS SERVICES.

(b) A telecommunications company [, as defined in section 16-1,] shall not submit a primary, local or intrastate interexchange carrier change order to a company providing local exchange telephone service prior to the order being confirmed in accordance with the provisions of Subpart K of Part 64 of Title 47 of the Code of Federal Regulations, as from time to time amended, AND THE PROVISIONS OF THIS SECTION, IF APPLICABLE.

(c) A TELECOMMUNICATIONS COMPANY OR ITS AFFILIATE OR AUTHORIZED REPRESENTATIVE USING TELEMARKETING TO INITIATE THE SALE OF TELECOMMUNICATIONS SERVICES SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS FOR ALL SUCH TELEMARKETING CALLS: (1) THE TELEMARKETER SHALL IDENTIFY HIMSELF BY NAME AND IDENTIFY THE TELECOMMUNICATIONS COMPANY PROVIDING THE PROPOSED SERVICES AND THE NAME OF THE BUSINESS, FIRM, CORPORATION, ASSOCIATION, JOINT STOCK ASSOCIATION, TRUST, PARTNERSHIP, OR LIMITED LIABILITY COMPANY, IF DIFFERENT FROM THE TELECOMMUNICATIONS COMPANY, FOR WHOM THE CALL IS MADE; (2) THE TELEMARKETER SHALL STATE THAT ONLY THE CUSTOMER MAY AUTHORIZE A CHANGE IN SERVICE; (3) THE TELEMARKETER SHALL CONFIRM THAT HE IS SPEAKING TO THE CUSTOMER; (4) THE TELEMARKETER SHALL CLEARLY EXPLAIN THE PROPOSED SERVICES IN DETAIL AND EXPLAIN THAT AN AFFIRMATIVE RESPONSE WILL CHANGE THE CUSTOMER'S TELECOMMUNICATIONS CARRIER; (5) THE TELEMARKETER SHALL OBTAIN FROM THE CUSTOMER AN AFFIRMATIVE RESPONSE THAT THE CUSTOMER AGREES TO A CHANGE IN HIS PRIMARY, LOCAL OR INTRASTATE INTEREXCHANGE CARRIER; AND (6) THE PRIMARY, LOCAL OR INTRASTATE INTEREXCHANGE CARRIER CHANGE ORDER OR INDEPENDENT THIRD PARTY VERIFICATION RECORD SHALL IDENTIFY THE INDIVIDUAL WITH WHOM THE TELEMARKETER CONFIRMED THE AUTHORIZATION TO CHANGE THE PRIMARY, LOCAL OR INTRASTATE INTEREXCHANGE CARRIER.

(d) (1) A TELECOMMUNICATIONS COMPANY OR ITS AFFILIATE OR AUTHORIZED REPRESENTATIVE USING TELEMARKETING TO INITIATE THE SALE OF TELECOMMUNICATIONS SERVICES SHALL (A) PRIOR TO SUBMITTING A CHANGE IN PRIMARY, LOCAL OR INTRASTATE INTEREXCHANGE CARRIERS, OBTAIN VERBAL AUTHORIZATION CONFIRMED BY AN INDEPENDENT THIRD PARTY OR WRITTEN AUTHORIZATION OF SUCH CHANGE FROM THE CUSTOMER, AND (B) NOT MORE THAN FOUR BUSINESS DAYS AFTER OBTAINING NOTIFICATION OR CONFIRMATION THAT THE CHANGE IN CARRIER HAS BEEN MADE, SEND BY FIRST CLASS MAIL TO THE CUSTOMER NOTIFICATION THAT

THE CUSTOMER'S PRIMARY, LOCAL OR INTRASTATE INTEREXCHANGE CARRIER HAS BEEN CHANGED, ALONG WITH A POSTPAID POSTCARD OR TOLL-FREE NUMBER WHICH THE CUSTOMER CAN USE TO DENY AUTHORIZATION FOR THE CHANGE ORDER. IF THE TELECOMMUNICATIONS COMPANY RECEIVES A POSTCARD OR TELEPHONE CALL AT THE TOLL-FREE NUMBER PROVIDED IN THE NOTIFICATION DENYING AUTHORIZATION FOR THE CHANGE, THE COMPANY SHALL IMMEDIATELY NOTIFY THE CUSTOMER'S PREVIOUS CARRIER AND SHALL CAUSE THE CUSTOMER'S PRIMARY, LOCAL OR INTRASTATE INTEREXCHANGE SERVICE TO BE SWITCHED BACK TO THE CUSTOMER'S PREVIOUS CARRIER AND SHALL: (i) ADJUST THE AFFECTED CUSTOMER'S BILL SO THAT THE CUSTOMER PAYS NO MORE THAN THE CUSTOMER WOULD HAVE PAID HAD HIS CARRIER NOT BEEN SWITCHED; (ii) PAY THE PREVIOUS CARRIER AN AMOUNT EQUAL TO ALL CHARGES PAID BY THE CUSTOMER AFTER THE CHANGE TO THE NEW CARRIER; AND (iii) PAY THE PREVIOUS CARRIER AN AMOUNT EQUAL TO ALL EXPENSES ASSESSED BY THE LOCAL EXCHANGE COMPANY FOR SWITCHING THE CUSTOMER'S PRIMARY, LOCAL OR INTRASTATE INTEREXCHANGE SERVICE.

(2) IT SHALL BE AN UNFAIR OR DECEPTIVE TRADE PRACTICE, IN VIOLATION OF CHAPTER 735a, FOR ANY TELECOMMUNICATIONS COMPANY TO UNREASONABLY DELAY OR DENY A REQUEST BY A CUSTOMER TO SWITCH A CUSTOMER'S PRIMARY, LOCAL OR INTRASTATE INTEREXCHANGE CARRIER BACK TO THE CUSTOMER'S PREVIOUS CARRIER.

(e) THE DEPARTMENT SHALL ADOPT REGULATIONS IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 54 TO IMPLEMENT THE PROVISIONS IN THIS SECTION.

(f) A telecommunications company, OR ITS AFFILIATE OR AUTHORIZED REPRESENTATIVE USING TELEMARKETING TO INITIATE THE SALE OF TELECOMMUNICATIONS SERVICES, which the department determines, after notice and opportunity for a hearing as provided in section 16-41, has failed to comply with the provisions of this section OR SECTION 2 OF THIS ACT shall pay to the state a civil penalty of not more than five thousand dollars per violation.

Sec. 2. (NEW) All bills for telecommunications services, whether issued by a telecommunications company or by a billing service, shall contain the name of each carrier providing service as well as a toll-free number for customer complaints for each such carrier printed clearly and conspicuously on the portion of the bill relating to each carrier.

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER sSB 499

STATE IMPACT	Minimal Workload Increase, Can Be Absorbed, Minimal Cost, Potential Revenue Gain, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Department of Public Utility Control, Department of Consumer Protection, Office of Attorney General

EXPLANATION OF ESTIMATES:

The Department of Public Utility Control(DPUC) may experience a minimal, absorbable workload increase to the extent that the bill as amended generates more consumer calls to the toll-free number operated by the department. However, the bill as amended does not require that the DPUC's toll free number be included on literature sent to customers who are swithching carriers, thus the workload increase is partially reduced.

Additionally, this bill as amended will result in a minimal cost to the DPUC to adopt regulations, yet it is expected that all workload increases can be handled within the anticipated budgetary resources of the department. Under the Unfair Trade Practices Act, the Department of Consumer Protection (DCP) has two methods for resolving complaints, 1) formal administrative hearings, or 2)forwarding the complaint to the Attorney General's Office for litigation. If most of the cases are handled administratively by DCP, a minimal workload increase is anticipated to result for the Office of the

Attorney General which can be handled within the agency's anticipated budgetary resources. Under the Unfair Trade Practices Act, civil penalties can be imposed for violations, thus, a revenue gain to the General Fund is anticipated. The extent of the additional revenue cannot be determined, as it would depend upon the number of violations which occurred and the amount of penalty imposed.

Senate "B" makes minor changes and partially reduces the workload increase to the Department of Public Utility Control.

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OLR AMENDED BILL ANALYSIS

sSB 499 (File 68, as amended by Senate "B")*

AN ACT CONCERNING SLAMMING

SUMMARY: This bill requires telecommunications companies to take additional steps to prevent the unauthorized switching of a customer's telecommunications carrier (commonly called "slamming"). It requires that all telecommunications services bills, whether issued by a telecommunications company or by a billing service, contain the name of each carrier providing services. The bill must also contain a toll-free number for customer complaints for each such carrier, printed clearly and conspicuously on the part of the bill relating to the carrier.

*<u>Senate Amendment "B"</u> (1) broadens the class of people who can authorize a change in residential services, (2) limits the types of methods a telemarketer can use to gain a customer's authorization to switch service, (3) gives telemarketers more time to confirm that a switch has been authorized and modifies the confirmation process, and (4) extends the penalty for slamming to telemarketers of telecommunication services.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

<u>**Slamming**</u>

Under current law, a telecommunications company cannot submit an order to change a customer's local or long-distance carrier unless it confirms the switch using one of four methods specified in federal regulation. The bill imposes additional requirements on such companies and new requirements on telemarketers working for them.

The bill restricts such companies, when they use telemarketing to make sales, and their telemarketing affiliates and representatives to two of these methods. These are (1) obtaining the customer's written authorization to make the switch or (2) using an independent third party to verify a verbal authorization. It thus precludes these telemarketers from using the other two authorization methods, electronic confirmation and mailing an information packet to a customer and waiting 14 days to make the switch.

Under the bill, a telemarketing representative must:

1. identify himself, the telecommunications company whose services he is marketing, and the company for whom the call is being made if this is not the telecommunications company;

2. state that only the customer can authorize a change in service (the customer is an adult authorized to change the service by the person whose name is on the local telephone service account; in the case of a business, it is the person authorized to change telecommunications service);

3. confirm that he is speaking to the customer;

4. clearly explain the proposed services in detail and explain that if the customer says yes, his service will be changed; and

5. require the customer to affirm that he wants to change his carrier.

The change order or verification by an independent third party of the switch must identify the person who authorized the change.

The bill requires a telemarketer to notify the customer that his carrier has been switched. The notification must be sent by first class mail within four business days after the telemarketer is informed that the switch has been made. The notification must include a postcard or toll-free number the customer can use to deny that he authorized the switch. If the customer denies that he authorized the switch, the telecommunications company must immediately notify the previous carrier and cause the service to be switched back. The telecommunications company also must (1) adjust the customer's bill so that he pays no more than he would have if his service had not been switched, (2) pay the previous carrier an amount equal to the customer's payments after the switch, and (3) pay the previous carrier the amount the local telephone company charged for making the switch.

The bill makes a telecommunications company's unreasonable delay or denial of a request to switch back a customer's long-distance carrier an unfair trade practice. By law, a telecommunications company that fails to comply with the law on slamming is subject to a fine of up to $5,000 per violation. The bill extends this penalty to telemarketers working for such companies and to violations by any of these entities of the requirement that bills contain the carrier's toll-free number. DPUC must adopt regulations to implement these provisions.

BACKGROUND

Unfair Trade Practices

Under the Unfair Trade Practices Act, the consumer protection commissioner may investigate complaints, issue cease and desist orders, order restitution in cases involving less than $5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, accept voluntary statements of compliance, and issue regulations defining what constitutes an unfair trade practice. The act also allows individuals to bring suit. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to $5,000 for willful violations and $25,000 for violating restraining orders.

Legislative History

On April 2, the Senate adopted Senate "A" and referred the bill to the Judiciary Committee. On April 8, the committee favorably reported the bill and recommended that the confirmation be mailed within five, rather than three business days after a customer has authorized the change. On April 28 the Senate adopted Senate "B" and passed the bill as amended. On May 1, the House rejected Senate "A" (which was similar to Senate "B") and passed the bill as amended by Senate "B".

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute
Yea 16 Nay 0

Judiciary Committee

Joint Favorable Report
Yea 30 Nay 6